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October 19, 1998

BY TELECOPIER AND FEDERAL EXPRESS

Mr Craig Zeller  
Remedial Project Manager  
WD-NSMB-SC  
United States Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-3104

Re Unilateral Administrative Order for Operable Unit Two at the Sangamo  
Weston/Twelve Mile Creek/Lake Hartwell PCB Contamination Superfund Site,  
Pickens County, South Carolina Notice of Intent to Comply

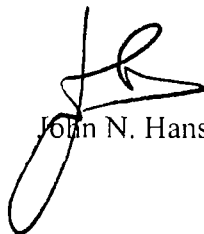
Dear Craig

Pursuant to Paragraph XXX of the referenced Unilateral Administrative Order, I write to advise EPA that Schlumberger Resource Management Services, Inc. will comply with the terms of that Order

If you have any questions, please let me, Brian or Cliff know

Best regards

Very truly yours,



John N. Hanson

JNH:mpb  
cc Brian Curtis  
Cliff Kirchof  
David Clay

O:\CL\100\99\1990\LR\jnh zeller re SRMS compliance with UAO wpd

10115901





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

September 28, 1998

By Overnight Mail

Brian W. Curtis, II, Esq.  
Schlumberger Resource Management Services, Inc.  
205 Industrial Boulevard  
Sugar Land, Texas 77478

John N. Hanson, Esq.  
Beveridge & Diamond, P.C.  
Suite 700  
1350 I Street, N.W.  
Washington, D.C. 20005-3311

SUBJ: Unilateral Administrative Order for Operable Unit Two  
at the Sangamo Weston/Twelve Mile Creek/Lake Hartwell  
PCB Contamination Superfund Site, Pickens County, South  
Carolina

Dear Brian and John:

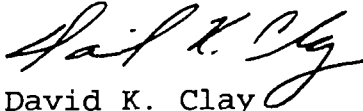
Attached you will find a copy of the Unilateral Administrative Order which resolves remaining issues for Operable Unit Two ("OU2") and memorializes work called for under the 1994 Record of Decision. The Order was signed on September 25, 1998, and has an effective date 15 days from that date.

I would like to thank you for your comments of September 15, 1998. EPA was able to incorporate many of your suggestions. As is now clearly stated in the Order, this UAO memorializes the 1994 ROD and recognizes that much of the work has already been performed. EPA does not intend for Schlumberger to repeat work that has already been performed and approved by EPA. In addition, I recognize that there are "boilerplate" provisions in the Order that do not seem to play in this unique situation. Some of them we have elected to delete while others have remained due to a remote possibility that they might come into play in the future.

EPA intends to continue working with you at the Site as has been done in the past. We continue to appreciate your

cooperation. Should you have any questions, please give myself or Craig Zeller a call.

Sincerely,

A handwritten signature in cursive script, appearing to read "David K. Clay".

David K. Clay  
Assistant Regional Counsel

Attachment

cc: Anna Thode (w/o attachment)  
Craig Zeller

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

UNILATERAL ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN/REMEDIAL ACTION

SANGAMO WESTON/TWELVE MILE CREEK/LAKE HARTWELL PCB CONTAMINATION  
SUPERFUND SITE; OPERABLE UNIT NO.2  
PICKENS COUNTY, SOUTH CAROLINA

UNILATERAL ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN/REMEDIAL ACTION  
SANGAMO WESTON/TWELVE MILE CREEK/LAKE HARTWELL  
PCB CONTAMINATION SUPERFUND SITE; OPERABLE UNIT NO. 2  
PICKENS COUNTY, SOUTH CAROLINA

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 4

In the Matter of	)	
	)	
SANGAMO WESTON/TWELVE MILE CREEK/	)	
LAKE HARTWELL PCB CONTAMINATION	)	Proceeding Under Section
SUPERFUND SITE, OPERABLE UNIT	)	106(a) of the Comprehensive
NO 2, Pickens County, South	)	Environmental Response,
Carolina	)	Compensation, and Liability
	)	Act of 1980, as amended by
Respondent	)	the Superfund Amendments and
	)	Reauthorization Act of 1986
SCHLUMBERGER RESOURCE	)	42 U S C Section 9606(a)
MANAGEMENT SERVICES, INC	)	
	)	
	)	U S EPA Docket No 98-25-C
	)	

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**UNILATERAL ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN AND REMEDIAL ACTION**

**I. INTRODUCTION AND JURISDICTION**

A. This Unilateral Administrative Order For Remedial Design and Remedial Action (the "Order") directs Respondent to develop the Remedial Design ("RD") for the remedy described in the Record of Decision, dated June 28, 1994, for the Sangamo Weston/Twelve Mile Creek/Lake Hartwell PCB Contamination Superfund Site; Operable Unit No. 2; Pickens County, South Carolina (the "Site", Sangamo OU2), and to implement the Remedial Design by performing the Remedial Action ("RA"), Operation and Maintenance, and Performance Monitoring. This Order is issued to Respondent by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by

Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-B and redelegated to the Director, Waste Management Division on January 5, 1989, by Regional Delegation No. 8-14-A.

## **II. PARTIES BOUND**

A. This Order applies to and shall be binding upon Respondent, its directors, officers, employees, agents, successors, and assigns. Respondent is responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of Respondent shall alter the Respondent's responsibilities under this Order.

B. Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's property rights, stock, or assets are transferred. Respondent shall provide a copy of this Order to all contractors, sub-contractors, laboratories, and consultants retained to perform any Work under this Order within five (5) days after the effective date of this Order, or on the date such services are retained, whichever date occurs later. Respondent shall also provide a copy of this Order to each person representing the



Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Notwithstanding the terms of any contract, Respondent is responsible for ensuring that its contractors and subcontractors and agent perform the Work contemplated herein in accordance with this Order.

C. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor and agent shall be deemed to be related by contract to the Respondent within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

### III. DEFINITIONS

Unless noted to the contrary, the terms of this Order shall have the meaning assigned to those terms pursuant to CERCLA or any regulation promulgated under CERCLA. Whenever the terms listed below are used in this Order and Appendices attached hereto, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.

§ 9601 et seq.

B. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day.

C. "EPA" shall mean the United States Environmental Protection

Agency.

D. "Hazardous Substance" shall mean any substance meeting the definition provided in Section 101(14) of CERCLA, 42 U.S.C.

§ 9601(14).

E. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

F. "Operation and Maintenance" or "O&M" shall mean all operation and maintenance activities required by the ROD and Section VIII (Work To Be Performed) of this Order, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

G. "Paragraph" shall mean a portion of this Order identified by a capital letter.

H. "Parties" shall mean the United States of America and Respondent.

I. "Performance Monitoring" shall mean all performance monitoring activities required by the ROD and Section VIII (Work To Be Performed), including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions), to ensure the effectiveness of the implemented remedy and to confirm over time that all Performance Standards are met.

J. "Performance Standards" shall mean those cleanup levels,

treatment standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ROD and Section VIII (Work To Be Performed).

K. "Pollutant or Contaminant" shall mean any substance defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

L. "Record of Decision" or "ROD" shall mean the EPA Record of Decision for the Site which was signed on June 28, 1994, by the Regional Administrator, EPA Region IV, including all attachments thereto. The ROD is incorporated herein by reference.

M. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondent to implement the final plans and specifications submitted by Respondent pursuant to the ROD and Section VIII (Work To Be Performed), including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

N. "Remedial Design" or "RD" shall mean all studies, investigations or surveys conducted, and plans and specifications prepared, that are necessary to implement the Remedial Action, Operation and Maintenance, and Performance Monitoring activities required by the ROD and Section VIII (Work To Be Performed), including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

O. "Respondent" shall mean Schlumberger Resource Management

Services, Inc. (formerly known as Schlumberger Industries, Inc.), which has its headquarters in Norcross, Georgia (formerly Sugar Land, Texas).

P. "SCDHEC" shall mean the South Carolina Department of Health and Environmental Control and any successor departments or agencies of the State.

Q. "Section" shall mean a portion of this Order identified by a roman numeral.

R. "Site" shall mean that portion of the Sangamo Weston/Twelve Mile Creek/Lake Hartwell PCB Contamination Superfund Site to be addressed by Operable Unit No. 2 of the Remedial Action, including Town Creek, Twelve Mile Creek, The Twelve Mile Creek Arm of Lake Hartwell, the Seneca River Arm of Lake Hartwell down to the Route 37 Bridge, just south of Clemson, located in Pickens County, South Carolina, as generally depicted in the map attached hereto as Appendix 1. Notwithstanding the Site boundaries depicted on Appendix 1, the Site includes all areas in close proximity to the contamination that are necessary for implementation of the Work.

S. "State" shall mean the State of South Carolina.

T. "United States" shall mean the United States of America, including the Department of Justice and EPA.

U. "Work" shall mean all activities Respondent is required to perform under this Order, including Remedial Design, Remedial Action, Operation and Maintenance, Performance Monitoring, and any schedules or plans required to be submitted pursuant thereto.

#### **IV. FINDINGS OF FACT**

A. The Site as defined herein is located in Pickens County, South Carolina. The Sangamo OU2 Site comprises the sediment, surface water, and biological migration routes downstream from the Sangamo Plant and satellite disposal areas that have site-related PCB-contamination. The Site includes approximately 40 stream miles of Twelve Mile Creek and its tributaries, the Twelve Mile Creek Arm of Lake Hartwell, and portions of the Keowee and Seneca River Arms of Lake HARTWELL down to the Route 37 bridge just south of Clemson, South Carolina.

B. Sangamo Electric Co. owned and operated a capacitor manufacturing plant in Pickens, South Carolina from approximately 1955 to 1976, near the headwaters of Lake Hartwell, known as the "Sangamo Plant". Sangamo Weston merged with Sangamo Electric Co. The plant manufactured several varieties of capacitors, including electrolytic, mica, and power factor capacitors as well as potentiometers. Schlumberger Resource Management Services, Inc. (formerly known as Schlumberger Industries, Inc.) is the current owner of the plant site, as a result of a merger with Sangamo Weston in 1990.

C. The Sangamo Plant used several varieties of dielectric fluids in its manufacturing processes, including PCB-containing dielectric fluids. Waste disposal practices from the Sangamo Plant included land disposal of off-specification capacitors and wastewater treatment sludges on the plant site. Plant debris and some off-specification capacitors were also disposed at the six satellite disposal areas. PCBs were also discharged with

effluent directly into Town Creek, which is a tributary of Twelve Mile Creek. Twelve Mile Creek is a major tributary of Lake Hartwell.

D. Estimates of the type and quantities of PCBs received, used, and discharged from the Sangamo Plant were derived by reviewing shipping records, Sangamo Weston records, interviews with Sangamo Weston employees, engineering and analytical reports completed by firms under contract to Sangamo Weston, and EPA documents.

E. In the mid 1970's, SCDHEC and EPA discovered that fish from certain areas of Lake Hartwell were contaminated with PCBs at levels above the U.S. Food and Drug Administration (FDA) safe tolerance limit. SCDHEC originally issued a health advisory in 1976 that warned the public against eating fish from the Seneca River Arm of Lake Hartwell north of State Highway 24 and Twelve Mile Creek. The original health advisory has been modified several times and remains in effect. Georgia also issued an advisory.

F. SCDHEC has conducted studies in Lake Hartwell since 1976 to evaluate the levels of PCB contamination in fish and have found that PCB concentrations in non-migratory fish collected within the Twelve Mile Creek embayment and other areas remain above FDA levels. Levels in migratory species collected at all stations in the lake had elevated levels of PCBs which frequently exceeded FDA tolerance levels.

G. In 1987, the Sangamo Site was proposed for inclusion on the National Priorities List.

H. On February 21, 1990, (55 Fed. Reg. 6154), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the NPL, set forth at 40 C.F.R. Part 300, Appendix B.

I. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced in September 1990, a Remedial Investigation and Feasibility Study ("RI/FS") for Operable Unit No. 2, pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. § 300.430. Schlumberger was given the opportunity to conduct the RI/FS but declined.

J. EPA issued the Final Remedial Investigation Report in May 1993, the Final Biological Investigation Report in February 1994, and the Final Feasibility Study Report in March 1994.

K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on April 8, 1994, in a major local newspaper of general circulation and provided opportunity for written and oral comments from the public on the proposed remedial action.

L. The decision by EPA on remedial action to be implemented at the Site is embodied in a Record of Decision ("ROD"), executed on June 28, 1994, on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

M. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action. The administrative record is available for public review at EPA's regional office in Atlanta, Georgia; The Village Library, Main Street, Pickens, SC 29671; Pickens County Public Library, Easley Branch, 110 West First Avenue, Easley, SC 29640; R.M. Cooper Library, Clemson University, Clemson, SC 29634; Hart County Library, Benson Street, Hartwell, GA 30643; and the U.S. Army Corps of Engineers, Lake Hartwell Natural Resources Management Center in Hartwell, GA.

N. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by Respondent if conducted in accordance with the requirements of this Order and its attachments. Respondent has voluntarily already undertaken a large portion of the Work required under this Order with EPA oversight.

#### **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

- A. The Site and the Sangamo Plant are "facilities" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. Respondent is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. Respondent is a "liable party" as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- D. The contaminants found at the Site are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- E. These hazardous substances have been released from the Site



into the sediments, surface waters, and organisms therein at the Site.

F. The past disposal and migration of hazardous substances at and/or from the Site are a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

G. The potential for future migration of hazardous substances at and/or from the Site poses a threat of a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

H. The release of one or more hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

I. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

#### **VI. NOTICE TO THE STATE**

Prior to issuing this Order, EPA notified the States of South Carolina and Georgia that EPA would be issuing this Order.

#### **VII. ORDER**

Based on the foregoing, Respondent is hereby ordered to comply with this Order, including but not limited to all Appendices to this Order, all documents incorporated by reference into or to be developed pursuant to this Order, and all schedules and deadlines in this Order, attached to this Order, incorporated by reference into this Order, or to be developed pursuant to this Order.

#### **VIII. WORK TO BE PERFORMED**

A. Respondent shall implement the selected remedy for the Site in accordance with the requirements of the ROD. EPA recognizes

that Respondent has already voluntarily undertaken much of the work called for in the ROD with EPA approval and oversight. This Order memorializes the remedy called for in the ROD and does not require Respondent to duplicate work that has already been performed and approved by EPA. There is, however, ongoing work and work yet to be performed as called for under the ROD. The specific requirements of EPA's selected remedy for the Site are embodied in Sections 9.1 through 9.4 of the ROD and generally consist of the following Remedial Action activities:

- 1) Continuation of Fish Consumption Advisory;
- 2) Public Education Program;
- 3) Aquatic Biota and Sediment Monitoring; and
- 4) Regulation of Twelve Mile Creek Impoundments.

The work to be performed by the Respondent under this Order for the above remedy components are discussed further in the following Paragraphs of this Section.

B. Continuation of Fish Consumption Advisory

The existing fish consumption advisory is currently maintained by SCDHEC. SCDHEC will remain responsible for management, supervision, and administration of the fish consumption advisory in the future. However, modifications to the existing advisory may be warranted in the future based on analytical results of the aquatic biota monitoring program discussed in Paragraph D below of this Section. Modifications to the existing advisory will require the replacement of existing signs which describe the advisory at lake access points. Moreover, additional signs and/or other methods may be instituted

by EPA and SCDHEC to increase the effectiveness and awareness of the fish consumption advisory on Lake Hartwell.

Respondent shall finance the incremental costs associated with modifications to the Lake Hartwell fish consumption advisory, to the extent these modifications can be attributed to either of the following criteria: 1) Modifications to the fish consumption advisory are warranted based on results of the aquatic biota and sediment monitoring program discussed in Paragraph D below of this Section; and 2) Modifications to the fish consumption advisory are warranted based on efforts of the public education program discussed in Paragraph C below of this Section. Financial obligations of the Respondent under this Paragraph may include, but are not limited to, the production of new signs and the replacement of existing signs which are no longer deemed effective (i.e. vandalism).

#### C. Public Education Program

The general objectives of the public education program are to: 1) Increase the awareness of the fish consumption advisory on Lake Hartwell; 2) Provide sufficient information to users of Lake Hartwell that will enable them to make informed decisions regarding the fish that are harvested and consumed from the lake; and 3) Keep the public regularly informed regarding PCB trends in sediments and aquatic biota of Lake Hartwell. The public education program is an iterative, phased approach that will evolve as effective means of reaching the targeted audience are identified by EPA through collaboration with SCDHEC, the community and other stakeholders.

Respondent shall prepare and submit a Public Education Program Work Plan to EPA, within sixty (60) days of the effective date of this Order, that outlines the activities that Respondent will conduct to fulfill the above objectives. The Public Education Program shall involve a needs assessment to determine the knowledge base of the targeted audience. Information gathered during the needs assessment shall be utilized to develop an information dissemination strategy. The information dissemination strategy may include periodic public meetings, interaction with local schools and churches, public service announcements via radio and/or television, and other means to be identified.

Upon EPA approval of the Public Education Program Work Plan, Respondent shall fully implement the tasks outlined therein. Respondent shall cooperate with EPA in performing the Work under this Paragraph. As requested by EPA, Respondent shall provide administrative, technical, and public relations support to EPA to ensure the objectives of the Public Education Program are achieved.

D. Aquatic Biota and Sediment Monitoring

Respondent shall finance and perform the aquatic biota and sediment monitoring program as described in Section 9.3 of the ROD. In February 1997, Respondent submitted a series of four reports to EPA regarding the Work described in Section 9.3 of the ROD. These documents are referenced as: 1) Remedial Alternative Work Plan, Section 9.3 Aquatic Biota and Sediment Monitoring Work Plan (ERM-Southeast, February 1997); 2) Sampling and Analysis

Plan, Section 9.3 Aquatic Biota and Sediment Monitoring (ERM-Southeast, February 1997); 3) Health and Safety Plan, Section 9.3 Aquatic Biota and Sediment Monitoring (ERM-Southeast, February 1997); and 4) Quality Assurance Project Plan, Aquatic Biota and Sediment Monitoring (ERM-Southeast (February 1997)). Respondent shall continue to conduct and perform the required aquatic biota and sediment monitoring program pursuant to the procedures and methods described in the above referenced reports.

Respondent shall notify the individuals listed at the end of this Section at least thirty (30) calendar days in advance before commencing the sample collection activities required under this Section. In addition, within three (3) business days prior to the sampling activity, Respondent shall place a confirmation phone call to these same individuals regarding the start date of the sampling activity. EPA's designated project manager will notify respondent in writing of any changes in project personnel to be notified regarding the Work of this Paragraph.

Within sixty (60) days after receiving the validated analytical data from the laboratory that is generated under this Paragraph, the Respondent shall submit a data report which summarizes the findings of the annual aquatic biota and sediment monitoring program. This report shall present the most recent annual sampling event results, while also presenting a statistical comparison and evaluation of historical events. The statistical comparison should include a contaminant trend analysis that EPA can utilize to evaluate the overall effectiveness of the selected remedy for the Site. The annual

summary report shall also be submitted to the individuals listed below. The number of copies to be submitted to each individual are included in parenthesis after each persons' name.

Craig Zeller, P.E. (7 copies)  
Remedial Project Manager  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
(404) 562-8827

Butch Younginer (3 copies)  
Bureau of Water  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201  
(803) 734-5401

Mike Alexander (3 copies)  
U.S. Army Corps of Engineers - Russell Project  
4144 Russell Dam Road  
Elberton, GA 30635  
(706) 213-3408

#### E. Regulation of Twelve Mile Creek Impoundments

EPA's selected remedy for the Site includes the passage of sediment through three small impoundments located on Twelve Mile Creek to facilitate the burial of PCB impacted sediments further downstream in the Twelve Mile Creek Arm of Lake Hartwell. Respondent has conducted a study of feasible remedial alternatives which permits passage of sediment through the Woodside I and II impoundments in a manner which does not adversely impact the downstream water quality and aquatic/benthic communities.

With EPA approval of the recommendations of this analysis and any necessary re-evaluations thereafter, Respondent shall finance, implement and remain responsible for all required O&M activities at the Woodside I and II impoundments near Cateechee,

SC to achieve the following Performance Standards:

- 1) Passage of sediments through the Woodside I and II impoundments in a manner that does not adversely impact existing operations of the respective hydroelectric facilities;
- 2) Passage of sediments through the Woodside I and II impoundments shall not adversely impact the downstream water quality and shall meet all identified applicable or relevant and appropriate requirements related to water quality that are identified by EPA;
- 3) Passage of sediments through the Woodside I and II impoundments shall not adversely impact the downstream aquatic and benthic communities.
- 4) Passage of sediments through the Woodside I and II impoundments in a manner to facilitate the burial of relatively more contaminated sediments downstream.

F. All aspects of the Work to be performed by Respondent pursuant to this Order shall be under the direction and supervision of a qualified contractor ("Supervising Contractor"), the selection of which shall be subject to disapproval by EPA. Within forty-five (45) days after the effective date of this Order, Respondent shall submit to EPA in writing the name, title, and qualifications of any contractor proposed to be the Supervising Contractor, including any primary support entities and staff. EPA will issue a notice of disapproval or an authorization to proceed.

G. If EPA disapproves a proposed Supervising Contractor,

Respondent shall submit to EPA within fifteen (15) calendar days after receipt of EPA's disapproval of the Supervising Contractor previously proposed, a list of contractors, including any primary support entities and staff, that would be acceptable to Respondent. EPA shall, after receipt of the list, provide written notice of the names of the contractors it disapproves and an authorization to proceed with respect to any of the other contractors. Respondent may select any contractor from that list that is not disapproved and shall notify EPA of the name of the Supervising Contractor selected within ten (10) days of EPA's authorization to proceed.

H. If at any time thereafter, Respondent proposes to use a different Supervising Contractor for Work at the Site, Respondent shall notify EPA and shall obtain an authorization to proceed from EPA before a new Supervising Contractor performs any Work under this Order. Any change in the Supervising Contractor made pursuant to this paragraph, shall not excuse any Work, deadlines, or schedules required under this Order.

I. Performance Standards - The Work performed by Respondent pursuant to this Order shall, at a minimum, achieve the Performance Standards as defined in Section III. J. of this Order.

J. Warranties - Notwithstanding any action by EPA, Respondent remains fully responsible for achievement of the Performance Standards. Nothing in this Order, or in EPA's approval of any submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the



Remedial Design or Remedial Action will achieve the Performance Standards. Respondent's compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable Performance Standards.

K. Notification of Off-Site Waste Shipment - If it is determined that any materials must be removed from the Site they shall be disposed of or treated at a facility approved by the EPA Project Coordinator and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. 9621(d)(3), with the U.S. EPA "Off-Site Policy," 40 CFR § 300.440 (50 Fed. Reg. 49200, September 22, 1993), and with all other applicable Federal, State and local requirements.

Respondent shall, prior to any off-Site shipment of hazardous substances from the Site to an off-Site waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to the EPA Project Coordinator, of such shipment of hazardous substances. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the State will not exceed ten (10) cubic yards.

1. The notification shall be in writing, and shall include the following information, where available: (a) the name and location of the facility to which the hazardous substances are to be shipped; (b) the type and quantity of the hazardous substances to be shipped; (c) the expected schedule for the shipment of the hazardous substances; and (d) the method of transportation.

Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous

substances to another facility within the same state, or to a facility in another state.

2. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for Remedial Action construction. Respondent shall provide all relevant information on the off-site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

3. The contents of this provision shall not be considered to be approval of the off-Site shipment of materials from the Site where the ROD requires treatment and/or storage on-Site.

#### **IX. CERTIFICATION OF COMPLETION**

Within thirty (30) days after Respondent concludes that the Remedial Action has been fully performed and that the Performance Standards have been attained, based upon consultation with and approval by EPA, Respondent shall so notify EPA in writing and advise that a Remedial Action Report is in preparation. EPA may elect at this time to require a meeting to discuss the strategy for long-term Performance Standards Monitoring activities. This meeting shall be followed by a written Remedial Action (RA) Report submitted within fifteen (15) days of the meeting, or within thirty (30) days if EPA elects to waive this meeting. The RA Report shall be authored and/or reviewed by Respondent's Project Coordinator, certifying that the Remedial Action has been completed in full satisfaction of the requirements of this Order. If, after EPA's receipt and review of the Remedial Action Report, EPA determines that the Remedial Action or any portion thereof

has not been completed in accordance with the Order, EPA shall notify Respondent in writing of the activities that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondent that the Remedial Action has been fully performed in accordance with this Order, EPA may notify Respondent that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondent's certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

#### **X. EPA PERIODIC REVIEW**

Under Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Respondent shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under Section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondent may be required to perform additional response actions or to modify the Work previously performed.

## **XI. ADDITIONAL RESPONSE ACTIONS**

A. EPA may determine that, in addition to the Work identified in this Order and attachments to this Order, additional response actions may be necessary to meet the Performance Standards as defined in Section III. J. of this Order or to protect human health and the environment. If EPA determines that additional response actions are necessary, EPA will notify Respondent and may require Respondent to submit a work plan for such additional response actions. EPA may also require Respondent to modify any plan, design, or other deliverable required by this Order, including any approved modifications. Respondent shall notify EPA of its intent to perform such additional response actions within seven (7) days after receipt of EPA's request for additional response actions.

B. Unless otherwise stated by EPA, not later than thirty (30) days after receiving EPA's notice that additional response actions are required pursuant to this Section, Respondent shall submit a work plan for the additional response actions ("Additional Response Action Plan") to EPA for review and approval. The plan shall conform to the applicable requirements of Sections VIII (Work to be Performed), XV (Quality Assurance Sampling and Data Analysis), and XVI (Compliance with Applicable Laws) as appropriate. Upon approval by EPA, the Additional Response Action Plan shall be incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order as if fully set forth herein. Upon approval of the Additional Response Action Plan pursuant to the procedures set

forth in Section XIII (EPA Review of Submissions), Respondent shall implement the Additional Response Action Plan according to the standards, specifications, and schedule in the approved Additional Response Action Plan.

## **XII. ENDANGERMENT AND EMERGENCY RESPONSE**

A. In the event of any action or occurrence resulting from Respondent's implementation of this Order after the effective date of this Order which causes or threatens a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or endangerment, and shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's alternative Project Coordinator. If neither of these persons is available, Respondent shall notify the EPA Region IV Regional Duty Officer, Emergency Response and Removal Branch, (404) 562-8700. Respondent shall take such action in consultation with EPA's Project Coordinator and in accordance with all applicable provisions of this Order. In the event that Respondent fails to take appropriate response action as required by this Section, and EPA takes that action instead, EPA reserves the right to pursue reimbursement of all EPA's costs attributable to the response action that are not inconsistent with the NCP.

B. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order any appropriate action necessary to protect human health and the

environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

### **XIII. EPA REVIEW OF SUBMISSIONS**

A. Upon receipt of any plan, report, or other item which is required to be submitted for approval pursuant to this Order, EPA shall, in writing, either: (1) approve the submission; or (2) disapprove the submission, notifying Respondent of deficiencies. If such submission is disapproved, EPA shall either: (1) notify Respondent that EPA will assume the responsibility for modifying the submission to correct the deficiencies, including, if necessary, the underlying Work; or (2) direct Respondent to modify the submission and, if necessary, the underlying Work, to correct the deficiencies.

B. In the event of approval or modification by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified.

C. Upon receipt of a written notice of disapproval and directive for modification, Respondent shall, within thirty (30) days or such other time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval.

Notwithstanding the notice of disapproval, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

D. If, upon resubmission, the plan, report, or item is not approved, Respondent may be deemed to be in violation of this

Order, unless any such deficiency is cured by Respondent within ten (10) days.

E. The provisions of this Order shall govern all proceedings regarding the Work performed pursuant to this Order. In the event of any inconsistency between this Order and any required deliverable submitted by Respondent, the inconsistency will be resolved in favor of this Order.

#### **XIV. PROGRESS REPORTS**

A. In addition to the deliverables set forth in this Order, Respondent shall submit written quarterly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The quarterly progress reports shall be submitted on October 15, January 15, April 15, and July 15 following the effective date of this Order. Respondent's obligation to submit progress reports continues until EPA gives Respondent written notice that Respondent has demonstrated, to EPA's satisfaction, that all of the terms of this Order, including any additional tasks which EPA has determined to be necessary, have been completed. In addition, EPA may request periodic briefings by Respondent to discuss the progress of the Work.

B. At a minimum, these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior quarter; (2) include all results of sampling and tests and all other data received by Respondent and not previously submitted to EPA; (3) include all plans, reports, deliverables, and procedures completed under the work plans during the previous quarter; (4) describe all work planned for the next quarterly

period with schedules relating such work to the overall project schedule for RA completion; and (5) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to mitigate or address any actual or anticipated problems or delays.

C. Upon the occurrence of any event during performance of the Work or additional response actions which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Respondent shall promptly orally notify the EPA Project Coordinator, or in the event of the unavailability of the EPA Project Coordinator, the EPA Region IV Regional Duty Officer, Emergency Response Center, (404) 562-8700, in addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. § 9603. Within ten (10) days of the onset of such an event, Respondent shall furnish to the EPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Respondent shall submit a report setting forth all actions taken.

#### **XV. QUALITY ASSURANCE SAMPLING AND DATA ANALYSIS**

A. Respondent shall use the quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plan" (QAMS-005/80) and the "Environmental Investigations Standard Operating Procedures and Quality Assurance Manual (US EPA Region 4 Environmental Services Division, May 1996), and subsequent amendments to such guidelines, while conducting all



sample collection and analysis activities required herein by any plan. Prior to the commencement of any monitoring project under this Order, Respondent shall submit for approval by EPA a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Respondent shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondent in implementing this Order.

B. Respondent shall make available to EPA the results of all sampling and/or tests or other data generated by Respondent with respect to the implementation of this Order, and shall submit these results in quarterly progress reports as described in Section XIV (Progress Reports) of this Order.

C. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA, and/or their authorized representatives, of any samples collected by Respondent pursuant to the implementation of this Order. Respondent shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

D. Respondent shall ensure that the laboratory(ies) utilized by Respondent for analyses participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. In addition, EPA may require Respondent to submit data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP) and may require laboratory analysis by Respondent of performance samples (blank and/or spike samples) in

sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901 et seq., and any other applicable statutes or regulations.

#### **XVI. COMPLIANCE WITH APPLICABLE LAWS**

A. All actions by Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable or relevant and appropriate laws, as required by CERCLA and the NCP. The United States has determined that the activities contemplated by this Order are consistent with the NCP.

B. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any portion of the Work requires a federal or state permit or approval under CERCLA and the NCP, Respondent shall submit on a timely basis applications and take all other actions necessary to obtain all such permits or approvals.

C. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

D. If Respondent enters into any contracts after the effective date of this Order for work required under this Order, Respondent shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and

employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations. Upon Request, Respondent shall provide a certification to the United States that such provision has been included in its contracts and subcontracts, within fifteen (15) days of final execution of contracts for Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring work.

#### **XVII. PROJECT COORDINATOR**

A. Within fifteen (15) days after the effective date of this Order, Respondent shall designate a Project Coordinator and shall submit the name, address, and telephone number of the Project Coordinator to EPA. Respondent's Project Coordinator shall be responsible for overseeing the implementation of this Order. If Respondent wishes to change their Project Coordinator, Respondent shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator.

B. All communications, whether written or oral, from Respondent to EPA shall be directed to EPA's Project Coordinator or Alternate Project Coordinator who shall be a Remedial Project Manager (RPM) or On-Scene Coordinator (OSC). EPA's Project Coordinator is:

Mr. Craig Zeller,  
Remedial Project Manager  
WD-NSMB-SC  
United States Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-3104

(404) 562-8827

EPA's Alternate Project Coordinator is:

Mr. Bob Jourdan, Chief  
North Site Management Branch  
United States Environmental Protection Agency  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-3104  
(404) 562-8790

C. EPA has the unreviewable right to change its Project Coordinator or Alternate Project Coordinator. If EPA changes its Project Coordinator or Alternate Project Coordinator, EPA will inform Respondent in writing of the name, address, and telephone number of the new Project Coordinator or Alternate Project Coordinator.

D. EPA's Project Coordinator and Alternative Project Coordinator shall have the authority lawfully vested in a RPM and OSC by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order and to take any necessary response action.

E. The absence of the EPA Project Coordinator from the Site shall not be cause for stoppage or delay of Work.

#### **XVIII. SITE ACCESS**

A. At all reasonable times from the effective date of this Order until EPA provides written notification that the Work has been completed pursuant to Section IX (Certification of Completion) of this Order, EPA and its authorized representatives and contractors shall have the authority to enter and freely move

about all property at the Site and off-Site areas to which access is required to implement this Order, including areas subject to or affected by the cleanup or where documents required to be prepared or maintained by this Order are located, to the extent access to the property is controlled by or available to Respondent. Access shall be allowed for the purposes of conducting any activity authorized by or related to this Order, including but not limited to: 1) inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its representatives or contractor pursuant to this Order; 2) reviewing the progress of Respondent in carrying out the terms of this Order; 3) conducting tests or inspections as EPA or its authorized representatives or contractors deem necessary to verify data or information submitted to EPA, take samples or investigate contamination at or near the Site; 4) assess the need for planning and implementing additional remedial or response activities at or near the Site; or 5) using a camera, sound recording device or other documentary-type equipment.

**XIX. ACCESS TO SITE NOT OWNED BY RESPONDENTS**

A. If the Site, or the off-Site area that is to be used for access, or other property subject to or affected by the cleanup or where documents required to be prepared or maintained by this Order are located, is controlled or owned in whole or in part by parties other than Respondent, Respondent will obtain, or use their best efforts to obtain, access agreements from such parties within thirty (30) days of the effective date of this Order.

Such agreements shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondent or Respondent's authorized representatives and contractors, and such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner.

B. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA in writing of its failure to obtain access. EPA may use its legal authorities to obtain access for Respondent, may perform those tasks or activities requiring access with EPA contractors, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities requiring access with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring such access, and shall be liable to EPA for reimbursement of all costs, including attorney fees, incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables. EPA reserves the right to seek cost recovery for all costs and attorney fees incurred by the United States to obtain access for Respondent.

C. Notwithstanding any provision of this Order, the United States retains all of its access authorities and rights under

CERCLA and any other applicable statutes or regulations.

**XX. ACCESS TO INFORMATION AND DATA/DOCUMENT**

**AVAILABILITY**

A. Respondent shall provide to EPA and its authorized representatives, upon request, access to inspect and/or copy all documents and information in its possession and/or control or that of its contractors or agents relating to the implementation of this Order, including all files, records, documents, photographs, sampling and analysis records, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information relating to remedial activities and other Work required under the Order.

B. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and shall be substantiated by Respondent at the time the assertion is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no claim of confidentiality accompanies specific documents or information when they are submitted to EPA, or if EPA has notified the Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA and 40 C.F.R.

§ 2.203(b), the public may be given access to such documents or information by EPA or the State without further notice to Respondent.

C. Respondent shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

D. Respondent shall maintain, for the period during which this Order is in effect, an index of documents that Respondent claims contain privileged information or confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondent shall submit a copy of the index to EPA.

#### **XXI. RECORD PRESERVATION**

A. Respondent shall provide to EPA, upon request, copies of all documents and information within, or which come within, its possession and/or control or the control of its contractors or agents relating to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

B. Until EPA provides written notification that the Work has



been completed pursuant to Section IX (Certification of Completion), Respondent shall preserve and retain, and shall instruct its contractors and agents to preserve and retain, all documents, records, and information of whatever kind, nature, or description relating to the performance of the Work.

C. All records and documents in Respondent's possession at any time prior to termination of this Order, that relate in any way to the Site shall be preserved and retained by Respondent for a minimum of ten (10) years after EPA provides written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed. Respondent shall acquire and retain copies of all documents that relate to the Site and that are in the possession of its employees, agents, accountants, contractors, or attorneys. After this ten (10)-year period, Respondent shall notify EPA at least ninety (90) days before the documents are scheduled to be destroyed and, upon request of EPA, shall deliver said records or documents to EPA at no cost.

D. EPA has the discretion to request that all records and documents be retained for a longer period of time by Respondent.

E. Within 30 days after the effective date of this Order, Respondent shall submit a written certification to EPA's Project Coordinator that it has, to the best of its knowledge, not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability with regard to the Site since notification of potential liability by the United States or the State or the

filing of suit against it regarding the Site. Respondent shall not dispose of any such documents without prior approval by EPA. Respondent shall, upon EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

#### **XXII. DELAY IN PERFORMANCE**

A. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this paragraph shall be considered a violation of this Order. No delay in performance of this Order shall affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

B. Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Order. Such notification shall be made by telephone to EPA's Project Coordinator or Alternate Project Coordinator within 48 hours after Respondent first knew or should have known that an event might cause a delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, the reasons the delay is beyond the control of Respondent, any defenses under Section 106(b)(1), 42 U.S.C. § 9606(b)(1), available to Respondent for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Financial inability to perform the Work, increased costs or

expenses associated with implementation of the activities required by this Order, or failure to attain the Performance Standards shall not be considered circumstances beyond the control of Respondent.

**XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK AND**

**INSURANCE**

- A. Respondent shall demonstrate to EPA their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work in a manner that allows EPA to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimated cost for the Remedial Design and Remedial Action contained in the Record of Decision for the Site. Respondent's lack of ability to demonstrate financial ability to complete any aspect of the Work shall not excuse compliance with this Order or any term thereof.
- B. Respondent shall maintain until the fifth anniversary of EPA's written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed, comprehensive general liability insurance with a combined single limit of at least one (1) million dollars naming the United States as an additional insured. No later than fifteen (15) days after the effective date of this Order, Respondent shall secure, and shall maintain until the fifth anniversary of EPA's written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed,

automobile liability insurance with limits of \$500,000 naming the United States as an additional insured. In addition, Respondent shall submit to EPA a certification that its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order. Respondent shall provide to EPA certificates of such insurance and copies of the insurance policies. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to matters so insured by that contractor or subcontractor, Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

C. For the duration of this Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing work on behalf of Respondent in furtherance of this Order.

#### **XXIV. REIMBURSEMENT OF RESPONSE COSTS**

A. EPA reserves the right to demand that Respondent reimburse EPA for all response costs, past and future, incurred by the United States including those costs incurred in overseeing

Respondent's implementation of the requirements of this Order or in performing any response action which Respondent fails to perform pursuant to this Order. EPA may submit to Respondent, on a periodic basis, an accounting of all response costs incurred by the United States with respect to the work outlined in this Order, whether implemented voluntarily prior to the issuing of this Order or implemented after the issuing of this Order. Response costs may include, but are not limited to, costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order and in performing activities as part of the RD/RA and community relations, including any costs incurred while obtaining access for Respondent. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RD/RA activities, Site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or disapproval of reports, and costs of performing any Work which Respondent failed to perform pursuant to this Order. EPA's Superfund Cost Organization and Recovery Enhancement System (SCORE\$) Report, or such other data summary as produced by EPA, shall serve as the basis for payment demands.

B. EPA's demand for payment shall request that Respondent, within thirty (30) days of receipt of each EPA accounting, remit a certified or cashier's check for the amount of those costs.

Interest shall accrue from the latter of the date that payment of a specified amount is demanded in writing, or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

C. Checks shall be made payable to "EPA Hazardous Substances Superfund" and shall include the name of the Site, the Site, identification number, the account number and the title of this Order. Checks shall be forwarded to:

EPA-REGION IV  
Attn: Superfund Accounting  
P.O. Box 100142  
Atlanta, GA 30384

D. Respondent shall send copies of each check and transmittal letter to EPA's Project Coordinator.

#### **XXV. UNITED STATES NOT LIABLE**

The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

#### **XXVI. ENFORCEMENT AND RESERVATIONS**

A. EPA reserves the right to bring an action against Respondent

under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any past or future response costs incurred by the United States related to the Site and not previously reimbursed by Respondent. This reservation shall include but not be limited to past costs, indirect costs, the cost of oversight, costs for compiling the cost documentation to support an oversight cost demand, as well as accrual of interest as provided in Section 107(a) of CERCLA.

B. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

C. Nothing herein shall preclude EPA from continuing any existing enforcement actions and/or taking any additional enforcement actions, including modification of this Order or issuance of additional orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq. or any other applicable law, or from seeking judicial enforcement of this Order. Respondent shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

D. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA,

SWDA, and any other applicable statutes and regulations.

E. Respondent shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$27,500 for each day in which a violation of this Order occurs or such failure to comply continues. Failure to comply with this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund (as defined in CERCLA) as a result of such failure to take proper action.

F. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, subsidiary or corporation for any liability it may have arising out of or relating in any way to the Site.

#### **XXVII. ADMINISTRATIVE RECORD**

Upon request by EPA, Respondent must submit to EPA all documents related to the selection of the response action for possible inclusion in the administrative record file.

#### **XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME**

This Order shall be effective 15 days after this Order is signed by the Director of the Waste Management Division, EPA Region IV. All times for performance of ordered activities shall be calculated from this effective date. When computing any period of time under this Order, if the last day would fall on a



Saturday, Sunday, or legal holiday, the period shall run until the next working day.

**XXIX. OPPORTUNITY TO CONFER**

A. Respondent may, within ten (10) days after this Order is signed by the Director of the Waste Management Division, EPA Region IV, make a written or oral request for a conference with EPA Region IV to discuss this Order. If requested, the conference shall occur at 61 Forsyth Street, SW, Atlanta, GA 30303-3104. All telephone communications regarding a conference should be directed to Mr. David K. Clay, Associate Regional Counsel, at (404) 562-9565, or to Mr. Craig Zeller, Remedial Project Manager, at (404) 562-8827. The written request for a conference may be delivered to EPA by some means of personal delivery other than certified mail.

B. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representatives.

**XXX. NOTICE OF INTENT TO COMPLY**

Respondent shall provide, not later than five (5) days after the

effective date of this Order, written or verbal notice to EPA stating unequivocally whether it will comply with the terms of this Order. Any verbal notice must be confirmed in writing within two (2) days of the giving of such verbal notice. A written notice of intent may be delivered to EPA by some means of personal delivery other than certified mail. If Respondent does not provide notice within five (5) days as specified above, or if Respondent provides notice which does not state unequivocally that Respondent will comply with the terms of this Order, then Respondent shall be deemed to have failed and refused to comply with this Order and to have violated this Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of Respondent's assertions.

#### **XXXI. MODIFICATION**

No material modifications shall be made to this Order without written notification to and written approval of EPA. The notification required by this Section shall set forth the nature of and reasons for the requested modification. No oral modification of this Order shall be effective. Modifications that do not materially alter the requirements of this Order, such as minor schedule changes, may be made upon the written approval of EPA. Nothing in this paragraph shall be deemed to alter EPA's authority to supervise and modify this Order.

So Ordered, this 25<sup>TH</sup> day of September, 1998.

BY:

A handwritten signature in dark ink, appearing to read "Richard D. Green", written over a horizontal line.

Richard D. Green  
Director, Waste Management Division  
Region 4  
U.S. Environmental Protection Agency

**APPENDICES**

Appendix 1      Site Map

